

## **GUIDELINES FOR REFUND OF CONGESTION RELIEF FEES**

The 2007 General Assembly passed legislation authorizing certain fees and taxes to be imposed by the Northern Virginia Transportation Authority (“NVTa”). The Supreme Court of Virginia declared these fees and taxes unconstitutional in its decision dated February 29, 2008.

The 2008 General Assembly passed House Bill 1578, Chapter 652 of the Acts of the Assembly, which became effective on March 25, 2008, when the Governor signed the legislation. Chapter 652 establishes a process for providing refunds to citizens who had paid these fees and taxes, declared to be invalid. One of the fees and taxes declared invalid was the “congestion relief fee”, imposed by NVTa pursuant to § 58.1-802.1 of the Code of Virginia.

Congestion relief fees are similar to “grantor’s taxes”, generally paid by sellers of real estate, collected at a “real estate closing” and disbursed by a “settlement agent” in accordance with a settlement statement. The settlement agent sends a check to the Clerk of the Circuit Court, along with the deed transferring the real estate to the purchaser for recordation, which includes the congestion relief fee. The Clerk records the deed, processes the check and provides a receipt back to the settlement agent. In accordance with the 2007 law, the Clerk then forwarded the congestion relief fee to the NVTa to help fund transportation improvements in Northern Virginia.

In order to accurately process the refund of the congestion relief fees, as described above, Chapter 652 provides that NVTa is required to send the funds collected back to the Clerk from which the fees were received. In the NVTa geographical area, there are 5 Clerks of the Circuit Court: Alexandria, Arlington, Fairfax, Loudoun and Prince William. So, the legislation requires that NVTa send 5 checks, one to each of the aforementioned Clerks, no later than May 1, 2008. NVTa has indicated it intends to send the checks to the 5 Clerks no later than April 10, 2008.

Under Chapter 652, the Clerk is required to establish “Guidelines” prior to May 23, 2008. These Guidelines have been developed jointly among the 5 Clerks of the Circuit Court, together with the Virginia Land Title Association, which represents a number of the “non-lawyer settlement agents”, and the Virginia Bar Association, which represents a number of the “lawyer settlement agents”. The goal of these Guidelines is to establish a consistent process for administering the refunds of congestion relief fees paid as part of real estate transactions in Northern Virginia, for the period January 1, 2008 through March 3, 2008, the date the congestion relief fees were no longer collected.

Chapter 652 requires the Clerk to make refunds to the settlement agents who paid the congestion relief fee to the Clerk prior to May 23, 2008 on behalf of the sellers involved in the real estate transaction. If there was no settlement agent involved in the

real estate transaction, the Clerk may establish a process for the refund request to be put on a motion's docket in the Circuit Court so the Judge can consider such evidence as the Judge deems appropriate, and upon a finding by the Judge that the person or entity requesting the refund is in fact entitled to receive the refund pursuant to a particular real estate transaction, enter an order refunding the appropriate amount to the such person or entity entitled to receive the refund pursuant to a particular real estate transaction. The Clerks will comply with the legislative requirements of Chapter 652 and intend to coordinate with the settlement agents to make the refunds to the applicable settlement agents as expeditiously as possible.

Chapter 652 requires settlement agents to make a refund to the person entitled to receive the refund pursuant to a particular real estate transaction, within 90 days after receipt of the funds from the Clerk, but in no event later than August 22, 2008. The settlement agents will comply with the legislative requirements of Chapter 652 and intend to coordinate with the Clerks to make the refunds to the applicable parties entitled to receive such refunds as expeditiously as possible.

In order to make the refund process as simple as possible, and to expedite the processing of the refunds to the persons entitled to the receive them, the following Guidelines have been developed to implement the provisions of Chapter 652:

1. The Clerk will prepare a list of all documents recorded in their offices which have been assessed the congestion relief fee. The list will be made available to settlement agents electronically. The list will include, at a minimum, the following information:
  - a. Name(s) of the grantor(s);
  - b. Date of recording;
  - c. Instrument number or Deed Book and Page reference;
  - d. Amount of the congestion relief fee paid; and
  - e. If known, the settlement agent, "return to" person or entity, or the person or entity that tendered the check for the recordation taxes.
2. The settlement agent, using the list provided by the Clerk will assist the Clerk in determining what person or entity handled the real estate settlement and therefore should be responsible under Chapter 652 to make the refund.
3. The Clerk will provide the appropriate settlement agent with the aforementioned list. The settlement agent will review the list and work with the Clerk to address any discrepancies.

4. Once the Clerk and settlement agent concur that the information on the list is complete and accurate, the Clerk will disburse the appropriate congestion relief fee refunds to the settlement agent. The Clerk may issue a check to a particular settlement agent for all of the refunds to be processed by that settlement agent, but if one check is issued, the Clerk shall provide the settlement agent with an itemized accounting of the refunds included in the check.
5. The settlement agent will then disburse the congestion relief fee refund to the appropriate parties pursuant to the sales contract, HUD-1 settlement statement, property settlement agreement or other legally binding agreement of the parties.
6. If the Clerk or settlement agent is unable to locate or identify the proper parties due a particular refund on or before September 30, 2008, the refund may be treated as unclaimed property, in accordance with Chapter 652.
7. The Clerk and the settlement agents will continue to work together to implement the provisions of Chapter 652.